

**OPINION
58-97**

July 22, 1958 (OPINION)

EDUCATION

RE: State Board of Higher Education - Powers and Duties

- Rules and Regulations, Power to Make

We have received your request for an opinion dated June 17, 1958.

Your problem involves the power of the Board of Higher Education to make regulations and enforce them on the campuses of our state institutions of higher learning. Your specific questions are as follows:

- "1. Does the Board of Higher Education have the power and authority to assess fines and/or penalties for violation of institutional regulations and does the Board where a student fails or refuses to make payment of such fines or assessments, have the power to resort to such common procedures as temporarily withholding academic grades, interrupting class attendance, or if all other methods fail, suspend or dismiss a student from an institution? Are common, reasonable rules and regulations enforceable?

- "2. If the Board has such power, does it have the authority to delegate it to the administration of an institution?"

Subsection 5 of section 15-1017 of the North Dakota Revised Code of 1943 authorizes the Board of Higher Education to set up rules and regulations for the management of all property at the institutions of higher learning and to provide penalties for violations, which may be collected by action in any court having jurisdiction. This statute gives authority to your Board to make rules and regulations, provide penalties, and to collect same in the proper court.

This would not, in our opinion, exclude your Board from imposing the further regulation that failure to pay the penalty subjects a student to interruption of his classes and withholding of his grades. It may be argued that a parking violation is so far removed from a student's personal actions and conduct, as a student, that it is not fair or just to interrupt his classes or withhold his grades for such violations. However, the use of automobiles and the parking of vehicles have become such an important matter in the operation of our colleges and university that strict and enforceable regulations and penalties are necessary to protect the student body, and provide necessary and regulated operation of these institutions, and as a result your Board and the school authorities must take drastic measures to maintain order, not only in the class rooms but on parking lots and all other parts of the campus.

We, therefore, hold that your Board or its delegated agents at the institutions of higher learning may, by rules and regulations, impose

penalties for traffic violations and failure on the part of a student to appear or pay such penalty may, by regulation, subject him to interruption of class work and withholding of grades. It should be noted that such a penalty does not constitute a fine. A penalty simply imposes the payment of money for doing some act which is prohibited or omitting to do some act which is required, and since section 15-1017 authorizes your Board to provide penalties, we believe your actions in so doing are within the law of this state, and such penalty may be enforced in our courts.

We further believe the refusal on the part of a student to pay a penalty fairly and regularly imposed could constitute insubordination and could be made in extreme cases the basis for suspension or dismissal from the institution.

Traffic violators who refuse to abide by the traffic rules or who fail to respond to notices sent them could also have their driving privileges on the campus suspended until such time as they comply.

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